IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

MFA.No. 60 of 2007()

OPG&W.52/2005 of FAMILY COURT, KOTTARAKKARA
.....

APPELLANT/RESPONDENT:

VIJAYAKUMAR, AGED 46,
S/O.CHELLAPPAN PILLAI, VIJAYABHAVAN,
KANNIMEL CHERRY, PATTAZHI VILLAGE,
PATHANAPURAM TALUK.

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENT/PETITIONER:

CHANDRA SEKHARAN PILLAI, AGED 62 YEARS,
SURESH BHAVAN, ARAMPUNNA, PUNALUR MURI,
PUNALUR VILLAGE, PATHANAPURAM TALUK.

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 60 of 2007

JUDGMENT

Balachandran, J.

This appeal is filed against the order of the Family Court, Kottarakkara in O.P.(G&W) No.52/05.

2. The respondent/the maternal grandfather of the ward Nisha filed O.P.(G&W)No.52/05 before the Family Court, Kottarakkara for appointing him as the guardian of the said ward. Minor Nisha was born on 6.8.1991 and her mother committed suicide on 23.6.1993 due to the cruelty meted out to her by the appellant/husband. As per the compromise arrived at in O.P.(G&W)No.208/94 on the file of the Family Court, Kollam, the custody of the minor was allowed to be had with the respondent till 31.3.1999, reserving right of the appellant/the father to have her custody on all Saturdays and Sundays and during Onam, Christmas and Pooja holidays as also during the mid summer vacation and

to have permanent custody from 1.4.1999. The evidence revealed that the ward was not properly taken care of by the appellant while he was allowed to have interim custody of the ward and she was not willing also to go with the appellant/the father and therefore, even the provision for interim custody did not work out. The ward is aged sixteen years and is capable of forming independent opinion of her own. She was with the respondent/the maternal grandfather for the last thirteen years after her mother's death.

3. The contention that is canvassed before us assailing the order of the Family Court is that the Family Court has not found that the appellant/the father is unfit to be the guardian of the ward and hence the original petition should not have been allowed.

4. The Family Court Judge has considered the case in all meticulous details and has entered into a finding that continued custody of the ward with

the respondent/the maternal grandfather will be for her betterment and that her interest will be best served by such custody. It is, consequently, that the impugned order is passed. In the matter of guardianship and custody of minor children, the utmost concern of the court is the welfare of the minor and that has been properly evaluated also by the Family Court. On going through the detailed findings of the Family Court in the matter, we are satisfied that no ground exists for interference in the impugned order. However, the petitioner will be free to move the Family Court after two years, when the child becomes major.

The appeal, in the circumstances, is dismissed.

(J.B.Koshy, Judge)

25th May, 2007

(K.P.Balachandran, Judge)

tkv